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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/824,841

04/15/2004

Ellis H. Leibman

S693-J

6857

28040

7590

02/22/2008

BRUCE A. JAGGER
6100 CENTER DRIVE
SUITE 630
LOS ANGELES, CA 90045

EXAMINER

BATTULA, PRADEEP CHOUDARY

ART UNIT

PAPER NUMBER

3722

MAIL DATE

DELIVERY MODE

02/22/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/824,841	Applicant(s) LEIBMAN, ELLIS H.	
	Examiner PRADEEP C. BATTULA	Art Unit 3722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 30, 2008 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1 - 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salisbury et al. (Salisbury; U.S. 5,163,768) in view of Youngs et al. (Youngs; U.S. 6,099,187).

In regards to Claims 1, 3, 6 and 7, Salisbury discloses a binder spine 14 having first and second side panels 18 and a back panel 16 (Column 3, Lines 52 – 57; Figure 6, Items 16 and 18) wherein the side panels mate with one another via a post 24 and a recess 26 and hold sheet items 22 when mated (Column 3, Lines 59 - 68; Figure 5, Items 24 and 26) and wherein there are three posts and three recesses (Figure 5, Items 24 and 26) and when mated the binder spine has a closed configuration. Salisbury

further discloses wherein the side panels and back panels are connected by hinges (Column 4, Lines 37 – 38) and that the posts and recesses are immovable from the side panels (Column 4, Lines 61 – 64).

Salisbury does not disclose said back panel being generally rectangular, having a width and a length and bounded by generally opposed longitudinal edges and generally opposed lateral edges, a first of said longitudinal edges being joined through a first living hinge to a first side panel mounting edge of a first side panel and a second of said longitudinal edges being joined through a second living hinge to a second side panel mounting edge of a second side panel, each of said binder spines being foldable along said living hinges between an open generally flat configuration and a generally closed configuration, a plurality of socket members located on said second side panel, said socket and post members including mating walls and being spaced apart in said open generally flat configuration by a distance, said mating walls being generally straight sided cylinders throughout their lengths, said socket and post members being positioned to retainingly interengage one another in said generally closed configuration said socket members being closed except for an opening at the top, each said opening being adapted to receiving a said post member in a snap fit wherein said post and socket members are adapted to forming airtight seals with one another when interengaged, the back panel in said second binder spine being at least about one-tenth of an inch wider than the back panel in said first binder spine, and the back panel in said third binder spine being at least about one-tenth of an inch wider than the back panel in said second binder spine, said distance between said socket members and post

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members being substantially the same in each of said first, second, and third binder spines.

Youngs discloses a binder spine 16 comprising: a back panel 22 with said back panels being generally rectangular (Figure 7, Items 18 (first panel), 20 (second panel), 22; all are rectangular), having a width and a length and bounded by generally opposed longitudinal edges and generally opposed lateral edges (Figure 7), a first of said longitudinal edges being joined through a first living hinge 24a to a first side panel 18 mounting edge of a first side panel and a second of said longitudinal edges being joined through a second living hinge 24b to a second side 20 panel mounting edge of a second side panel (Column 3, Lines 24 – 31; Figure 1, Items 18, 20, 22, 24a, 24b), each of said binder spines being foldable along said living hinges between an open generally flat configuration and a generally closed configuration (Column 3, Lines 31 – 40; Figure 1 - 4, and 7), a plurality of post members 60 located on said first side panel (Column 4, Lines 54 – 57; Column 5, Lines 63 – 67; Figure 1, Items 18, 60) and a plurality of socket members 32 located on said second side panel (Column 5, Lines 14 – 17; Figure 2, Item 32), said socket and post members including mating walls (Column 6, Lines 7 – 9; they frictionally engage and therefore they are mating) and being spaced apart in said open generally flat configuration by a distance (Figure 2, Items 32 and 60; flat and spaced apart when open configuration), said mating walls being generally straight sided cylinders throughout their lengths (Column 5, Lines 63 – 66, Column 6, Lines 7 – 14; Item 60 is a cylindrical plug and frictionally mates with walls 68 of socket 32 where Figures 2 - 4 show both mating elements to be **general** straight sided cylinders), said

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socket and post members being positioned to retainingly interengage one another in said generally closed configuration (Figures 2 – 4), said socket members being closed except for an opening at the top (Column 4, Lines 28 – 31), each said opening being adapted to receiving a said post member (Figures 2- 4). With respect to receiving a snap fit wherein said post and socket members are adapted to forming airtight seals with one another when interengaged; Youngs discloses the mating walls are cylindrical, as stated above, and are comprised of rigid material (Column 3, Lines 63 – 66; Column 4, Lines 54 – 57 – materials which are not rigid are well known to not be rigid). The mated portions and walls are that of disclosed by Applicant and therefore will create the same effect as disclosed by Applicant (Specification, Page 9, Lines 4 - 12). Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide Salisbury with a flat opening and mating portions of Youngs in order to provide a binder spine allowing easy insertion of papers while further providing an extremely secure fastening of said papers to the binder spine.

With respect to a system of binder spines and the back panel in said second binder spine being at least about one-tenth of an inch wider than the back panel in said first binder spine, and the back panel in said third binder spine being at least about one-tenth of an inch wider than the back panel in said second binder spine, said distance between said socket members and post members being substantially the same in each of said first, second, and third binder spines; Salisbury modified by Youngs discloses a way to make one binder spine and therefore several binder spines can be made and Salisbury modified by Youngs does not disclose a difference in the spacing between the

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posts and sockets. Salisbury modified by Youngs discloses the claimed invention except for the size of the different binder spines of the system. It would have been obvious to one having skill in the art to construct the individual binder spines in any desirable size or dimensions, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. Therefore, it would have been to construct the binder spines with any desirable dimension, since applicant has not disclosed the criticality of having a particular size, and invention would function equally as well if constructed in any desirable size. *In Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984).

In regards to Claims 2, 4, 5, 8, and 9, as applied to Claims 1 and 6 (Claim 8), please review the rejection of Claim 1 and the discussion of the size of the binder spines and their components.

Response to Arguments

Applicant's arguments with respect to claims 1 - 9 have been considered but are moot in view of the new ground(s) of rejection.

With respect to the different sizes, Applicant is only scaling up and scaling down already existing art and the changes of size is not changing any functionality of the binder spine and its part. The change in size is only changing the dimensions and therefore it is seen as only requiring ordinary skill in the art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PRADEEP C. BATTULA whose telephone number is (571)272-2142. The examiner can normally be reached on Mon. - Thurs. & alternating Fri. 7:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. C. B./
Examiner, Art Unit 3722
February 13, 2008

/Monica S. Carter/
Supervisory Patent Examiner, Art Unit 3722